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DOCKET FILE COPY ORIGINAL

October 12, 2005

Office of the Secretary
Federal Communications Commission
445 -12th Street, S.W., Rm TW-204B
Washington, D.C. 20554

RE: Appeal to the Federal Communications Commission by
Academy of Careers and Technology, Billed Entity No. 225998

To Whom It May Concern:

Enclosed are an original and five copies of an Appeal relative to a funding decision by the Schools and Libraries Division of USAC denying funding to the charter school noted above. Please file the original and four of the copies and return one time-stamped copy to me in the enclosed self-addressed stamped envelope.

Please direct all communication regarding this appeal to my attention at the address noted above. Thank you for your assistance in this matter.

Yours truly,



Linda Schreckinger Sadler

Encl.

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Before the
Federal Communications Commission
Washington, D.C. 20554

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OCT 18 2005

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In the Matter of:)
Appeal of Decision of the)
Universal Service Administrator)

CC Docket No. 02-6

by)

Academy of Careers and Technologies)
San Antonio, Texas)

File No. SLD -

Federal-State Joint Board on)
Universal Service Changes to the)
Board of Directors of The National)
Exchange Carrier Association, Inc.)

APPEAL AND REQUEST
FOR EXPEDITED RELIEF

TO: Federal Communications Commission
Office of the Secretary
445 - 12th Street, SW
Washington, DC 20554

This Appeal made to the Federal Communications Commission ("FCC") seeking review of decisions by the Schools and Libraries Division ("SLD") Universal Service Administrative Company ("USAC") denying funding to Academy of Careers and Technologies ("ACT") for Funding Year 2004-2005.

Appeal Is Taken From the Following Funding Commitment Decision Letter

(1) Form 471 Application Number: 418938
Funding Year 2004: 07/01/2004-06/30/2005
Billed Entity Number: 225998

Date of Funding Denial Notice: August 16, 2005

No. of Copies rec'd
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Contact Information

- (1) To discuss this appeal: Linda Schreckinger Sadler Esq.
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Tel. 216-288-1122
- (2) For all other SLD purposes: Brenda Hill
Academy of Careers and Technologies
807 Roosevelt Street
San Antonio, TX 78210
Tel. (210) 534-9690
Fax. (210) 572-5321

Funding Request Numbers Appealed

FRN – 1153897

SLD's Reason for Funding Denial

The SLD denied funding on the basis "...the vendor was improperly involved in the competitive bidding process."

Statement in Support of Appeal

This appeal relates to the Funding Commitment Decision dated August 16, 2005 denying funding for Form 471 Application No.418938 (FRN 1153897) alleging violation of the competitive bidding process: "Similarities in description on Forms 470, in Technology Plan, and in Request For Proposal (RFP) among applicants associated with this vendor indicate that the vendor was improperly involved in the competitive bidding process."

The funding denial came without the SLD making appropriate inquiry into the distinctive facts and circumstances pertinent to the funding application filed by this Applicant and instead lumped it together with other charter schools associated with the same vendor that were denied funding for the same or similar reasons. It is the position of Academy of Careers

and Technologies that had the SLD assessed and evaluated the individual facts associated with its application, it would not have improperly denied funding.

1. The SLD erred when it denied funding without analyzing the unique facts and circumstances relevant to Academy of Careers and Technologies' application.

Academy of Careers and Technologies properly prepared, and timely filed, an FCC Form 471 for internal connections services. The SLD denied funding on the relevant FRN alleging a violation of the competitive bidding process. Based on the Form 470 Applications, Technology Plans and Requests For Proposal of several small Texas charter schools, the SLD made a finding "that vendor was improperly involved in the competitive bidding process." The denial by the SLD was without consideration of the individual facts and circumstances distinct to ACT's application. ACT's application and documentation should have been evaluated independently of the applications and documentation of the other schools associated with the vendor in question.¹ It is for this reason that the SLD's denial of funding to Academy of Careers and Technologies must be overturned. Further, the SLD failed to apply any standards of law in rendering its decision to deny funding to this school.

Had the SLD carefully reviewed the application filed by ACT, it would have easily ascertained that ACT is a charter school located in San Antonio, Texas with a last-year enrollment of 123 students. ACT relies heavily on funding obtained through the E-rate program to provide technology to its students. This small charter school is

¹ See *Request For Review by "Consolidated Applicants"*, CC Docket No. 96-45, CC Docket No. 97-21 Order DA-01-1721 (Adopted July 19, 2001).

without resources to hire consultants or have formal training for its personnel in E-rate rules, regulations and procedures. As such, it must rely on the internet and other available resources for guidance and advice in preparing its E-rate applications.

Prior to preparing and filing its Form 470 application for Program Year **2003-2004**, ACT asked RGC, Inc., the service provider alleged to have been involved in the program bidding violations, for assistance in locating resources upon which it could rely in preparing its application forms and Requests for Proposal (“RFP”). RGC is an SLD-registered service provider who specializes in providing E-rate services to small charter schools in Texas. As such, it has knowledge of public resources that can be made available to these schools without any actual involvement in the application preparation or bidding processes. Had the SLD fulfilled its obligation to individually investigate the facts and circumstances of the charter schools associated with this vendor, it would have learned that RGC had previously provided services to these schools. Having a prior working relationship with them, RGC was in a position to provide them with neutral assistance. RGC provided neutral assistance by steering the schools to resources where useful information could be obtained for the preparation of their E-rate forms and applications. It is likely RGC directed the schools to the same public website(s) and public resources, which is why there are significant similarities in their applications, RFPs and Technology Plans. Under USAC Guidelines, a Service Provider is permitted to render neutral assistance to applicants in developing RFPs even if the service provider plans to submit a bid, and a service provider is also permitted to provide neutral technical assistance with the development of a technology plan.²

² See “*Chapter 5 - Service Provider Role in Assisting Customers*” at <http://www.sl.universalservice.org/vendor/manual/chapter5.asp>

Had the SLD made specific inquiry of the ACT and the other charter schools associated with RGC, it could have/would have easily ascertained that only neutral assistance was provided. Instead of concluding that this vendor was improperly involved in the competitive bidding process, it would have learned that by directing these charter schools to the same freely available resources RGC remained compliant with the requirement of providing only neutral assistance. Had the SLD made effective inquiry of ACT, it would have been able to determine that throughout the competitive bidding process, RGC remained neutral and, in fact provided no assistance for the 2004-2005 program year. Had the SLD properly investigated the individual application of each charter school, it would likely have discovered that the same neutral, fundamental assistance was provided each school.

To a great extent, the preparation of ACT's 2004-2005 Funding Year application and RFP was copied from its 2003-2004 Funding Year 470 application and RFP. Although RGC rendered no assistance to ACT for 2004-2005 applications and RFPs, since no SLD inquiry was made, the SLD *assumed* help was provided. See Exhibit "A", Affidavit of Brenda Hill, attached hereto and incorporated as though fully rewritten herein.

Had the SLD made individual inquiry of the charter schools in question, it is also likely that the SLD would have discovered that each of the schools accused of bidding violations belongs to The Association of Charter Educators of Texas, ("ACE") an organization that provides support to the Texas charter school community, and the members to one another. The common link of ACE membership as well as the extensive availability of resources provided by the Texas Education Agency could provide explanation for the similarities in the applications and documentation of the schools.

Not having provided any specific basis for its findings, the language employed by the SLD in its Funding Decision Commitment Letter is unclear to what extent, if any, the SLD evaluated each of the schools' unique facts and circumstances.³ It was wrong of the SLD, and contrary to the FCC's ruling in *Consolidated Schools*, to make allegations of competitive bidding violations and deny funding to ACT without first individually reviewing the applications of ACT and the other charter schools associated with the vendor on a case-by-case basis. The SLD had an obligation to properly investigate and assess the individual facts and circumstances associated with the application filed by ACT rather than making a superficial assessment and reaching an unsubstantiated conclusion. Had it met its obligation it would not have made the erroneous finding that there were violations of the competitive bidding process and denied funding on that basis. ACT complied with program rules and regulations and deserves to have its funding request evaluated on its merits. Therefore, the SLD's decision should be overturned and this matter remanded for further determination.

Conclusion

A review of the record supports the finding that the SLD failed to properly investigate and assess the individual facts and circumstances associated with the applications and forms filed by Academy of Careers and Technologies. The SLD committed reversible error when it denied funding on Application No. 418938 on the basis: "Similarities in description on Forms 470, in Technology Plan, and in Request For Proposal (RFP) among applicants associated with this vendor indicate that the vendor was improperly involved in the competitive bidding process." The FCC's holding in *Consolidated Schools*, *supra* requires the SLD to analyze the

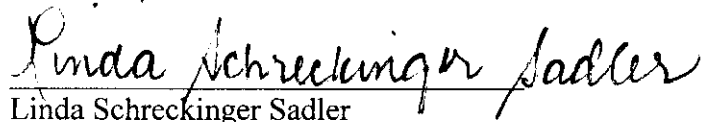
³ See "*Consolidated Applicants*" *supra*, Section II: Discussion, at Paragraph 8

unique facts and circumstances of ACT prior to rendering its decision, which it clearly failed to do in this instance. The application of ACT is entitled to individualized assessment and this matter should be remanded to the SLD for further review.

Applicant hereby requests:

1. That this matter be acted upon within 90 days or less of the filing date of this appeal;
2. That the FCC order funding for all FRN's set forth herein.
3. That funds be set aside to totally fund the District's request.

Respectfully submitted,



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Exhibit A

COUNTY OF Bexar)
) ss. AFFIDAVIT
STATE OF TEXAS)

Now comes BRENDA HILL, being first duly sworn deposes and states:

1. I am employed by the Academy of Careers and Technologies (ACT).
2. ACT is a charter school located in San Antonio, Texas
3. My job responsibilities include preparing and filing E-rate applications on behalf of the school.
4. I am the primary person at ACT responsible for E-rate related functions.
5. RGC, Inc. is a registered Service Provider with the SLD.
6. Prior to filing our Funding Year 2003-2004 application and posting our RFP, RGC, Inc. provided me with examples of RFPs and directed me to public resources from which to gather helpful information.
7. The SLD Service Provider Manual states that applicants may obtain assistance from service providers in developing RFPs, even if the service provider plans to submit a bid in response to that RFP, as long as the Service Provider's assistance is neutral.
8. The advice and information provided to ACT by RGC, Inc. was in fact neutral.
9. It is my opinion that at no time did RGC, Inc. exceed the permitted scope of its role as a Service Provider under the E-rate program.
10. The Technology Plan for our school was prepared by myself using information and assistance provided by the Texas Education Agency.

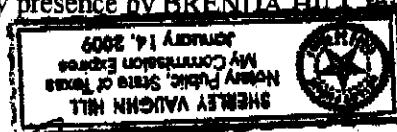
11. I was the person who prepared and posted the school's 470 application and RFP for Funding Year July 1, 2004- June 30, 2005.
12. ACT's Funding Year 2004-2005 Form 470 application and RFP were copied from the applications and RFP that I prepared and posted for the prior E-rate funding year (2003-2004)
13. I used the same state-approved Technology Plan for the 2004-2005 Funding Year.
14. Although three (3) Service Providers picked up a copy of the RFP, RGC, Inc. was the only company that submitted a bid in response to the RFP.
15. The Funding Commitment Decision Letter dated August 16, 2005 relative to FRN 1153897 denied funding because: "Similarities in description on Forms 470, in Technology Plan, and in Request For Proposal (RFP) among applicants associated with this vendor indicate that the vendor was improperly involved in the competitive bidding process."
16. As previously stated herein, RGC, Inc. provided me only with neutral assistance during Funding Year 2003-2004.
17. RGC, Inc. provided me no assistance during the preparation of Funding Year 2004-2005 applications and documentation.
18. Since the advice provided by RGC was at all times neutral, the assistance they provided was not in violation of SLD rules and regulations.

19. Since RGC, Inc. was not improperly involved in the competitive bidding process
ACT should be granted internal connections funding for Funding Year 2004-
2005.
20. I hereby authorize a facsimile, photocopy or pdf copy of this Affidavit to be
deemed my original signature.

FURTHER AFFIANT SAYETH NAUGHT.

Brenda Hill
BRENDA HILL

SWORN TO BEFORE ME and subscribed in my presence by BRENDA HILL this
12 day of October 2005.



Sherley Hill
NOTARY PUBLIC